

No. 14-1952 PH

¹ Statutory references are to the RSMo Supp. 2013 unless otherwise indicated.

On December 26, 2014, Jackson filed a motion for continuance. On December 29, 2014, the Board filed its objection to the motion, then later withdrew its objection. On December 30, 2014, we denied the motion because § 338.055.4 requires this Commission to hold a preliminary hearing within fifteen days after the licensee has been served.

On December 31, 2014, we held a preliminary hearing to determine whether Jackson's activities constitute a clear and present danger to the public health and safety which would require an immediate suspension or restriction of her license to practice pharmacy. Joshua L. Hill with Newman, Comley & Ruth PC represented the Board. Jackson represented herself.

The Board requested that we immediately suspend Jackson's license to practice pharmacy for a period of one year. At the close of the hearing, as required by § 338.055.4, we informed Jackson and the Board that we would grant the Board's request.

On January 5, 2015, the Board filed a proposed decision with findings of fact and conclusions of law. Pursuant to 1 CSR 15-3.530, we now issue a written decision.

Findings of Fact

1. Jackson is licensed as a pharmacist in Missouri. Her license was current and active at all times relevant to this case.

A. Stealing Controlled Substances

2. Jackson was employed at Plaza Pharmacy in Sedalia, Missouri, from August 2012 to May 2013. She was not fired from Plaza Pharmacy, but the pharmacist in charge stopped scheduling her for work due to performance concerns.

3. On January 5, 2014, Jackson entered Plaza Pharmacy using the key and alarm code that she had obtained during her employment there. Jackson removed 100 tablets of amphetamine salts 30 mg, 100 tablets of morphine sulfate 15mg, 73 tablets of Alprazolam

0.25mg, and 18 tablets of Alprazolam 0.5mg. She provided these stolen tablets to an individual named "Lay-Lo" for resale on the street.

4. Amphetamine salts 30 mg and morphine sulfate are Schedule II controlled substances. Section 195.017.4(3)(a).

5. Alprazolam 0.25mg and Alprazolam 0.5mg are Schedule IV controlled substances. Section 195.017.8(2)(a).

6. Jackson did not have a prescription for the controlled substances she removed from Plaza Pharmacy on January 5, 2014, and she did not pay for the tablets she removed.

7. Jackson also misappropriated an undetermined amount of hydrocodone for her own personal use from another former employer, Bing's Rexall Drug in Sedalia, Missouri, during 2012 and 2013.

8. Jackson did not have a valid prescription for the hydrocodone she was misappropriating from Bing's Rexall Drug and did not pay for the tablets she was removing from that pharmacy for her own personal use.

9. Jackson ingested the tablets of hydrocodone while working at Bing's Rexall Drug.

10. At the time the hydrocodone was being removed from Bing's Rexall Drug by Jackson, it was a Schedule III controlled substance. Section 195.017.6(4)(c).

II. Forging Prescriptions

11. During 2012 and 2013, Jackson filled prescriptions that were not authorized by her health care providers. The prescriptions were created under the names of Dr. Steven Eldenburg and Dr. Donald Alcorn and either filled by Jackson directly or presented by Jackson to be filled at other pharmacies.

12. Jackson created prescriptions for Adderall and Fioricet under the name of Dr. Steven Eldenburg that were not authorized by Dr. Eldenburg.

13. Adderall is a Schedule II controlled substance. Section 195.017.4(3)(a).
14. Fioricet is a Schedule IV controlled substance. Section 195.017.8(2)(b).
15. Jackson created prescriptions for Fiorinal with codeine, Tylenol with codeine #3, Clonazepam, Midrin, Norco 10/325 and Fioricet with codeine under the name of Dr. Donald Alcorn that were not authorized by Dr. Alcorn.
16. Fiorinal with codeine is a Schedule III controlled substance. Section 195.017.6(4)(a).
17. Tylenol with codeine is a Schedule III controlled substance. Section 195.017.6(4)(a).
18. Clonazepam is a Schedule IV controlled substance. Section 195.017.8(2)(i).
19. Norco 10/325 is a Schedule III controlled substance. Section 195.017.6(4)(d).
20. Fioricet with codeine is a Schedule III controlled substance. Section 195.017.6(4)(a).

III. Personal Consumption of Controlled Substances

21. During 2012, 2013 and early 2014, Jackson used methamphetamine, which is a Schedule II controlled substance. Section 195.017.4(3)(c).
22. Jackson consumed hydrocodone without a prescription for it while on duty as a pharmacist at Bing's Rexall Drug.
23. Jackson has now been sober for ten months.

Conclusions of Law

We have jurisdiction over this matter. Section 338.055.4. The Board has the burden of proving that the actions of Jackson constitute a clear and present danger to the public health and safety. *Id.*

In its complaint, the Board requested authority to immediately suspend Jackson's license for a period of one year pursuant to § 338.055.4, which provides:

If the board concludes that a licensee or registrant has committed an act or is engaging in a course of conduct which would be grounds for disciplinary action which constitutes a clear and present danger to the public health and safety, the board may file a complaint before the administrative hearing commission requesting an expedited hearing and specifying the activities which give rise to the danger and the nature of the proposed restriction or suspension of the licensee's or registrant's license. Within fifteen days after service of the complaint on the licensee or registrant, the administrative hearing commission shall conduct a preliminary hearing to determine whether the alleged activities of the licensee or registrant appear to constitute a clear and present danger to the public health and safety which justify that the licensee's or registrant's license or registration be immediately restricted or suspended. The burden of proving that the actions of a licensee or registrant constitute a clear and present danger to the public health and safety shall be upon the state board of pharmacy. The administrative hearing commission shall issue its decision immediately after the hearing and shall either grant to the board the authority to suspend or restrict the license or dismiss the action.

At the hearing, the Board presented evidence, and Jackson admitted, that she burglarized Plaza Pharmacy to obtain controlled substances for resale on the street, forged prescriptions for controlled substances for her own personal use, stole and ingested controlled substances while on duty as a pharmacist, and used methamphetamine.

These actions are clearly and closely related to the practice of pharmacy, which is defined in § 338.010 and includes, in part:

the interpretation, implementation, and evaluation of medical prescription orders, including any legend drugs under 21 U.S.C. Section 353; receipt, transmission, or handling of such orders or facilitating the dispensing of such orders; the designing, initiating, implementing, and monitoring of a medication therapeutic plan as defined by the prescription order so long as the prescription order is specific to each patient for care by a pharmacist; the compounding, dispensing, labeling, and **administration of drugs and devices pursuant to medical prescription orders . . .**; the participation in drug selection according to state law and participation in drug utilization reviews; **the proper and safe storage of drugs and devices and the maintenance of proper records thereof**; consultation with patients and other health care practitioners, and veterinarians and their clients about legend drugs, about the safe and effective use of drugs and devices; and the offering or performing of those acts, services, operations, or

transactions necessary in the conduct, operation, management and control of a pharmacy.

(Emphasis added).

Although Jackson testified that she has been sober for ten months, she agreed that she should not be practicing pharmacy currently in the state of Missouri. We agree with her and the Board. Her actions in forging prescriptions and consuming and stealing controlled substances, coupled with her relatively short period of sobriety, demonstrate that it is not safe for her to dispense such drugs or to properly and safely store them. Her drug abuse also raises concerns that she could make mistakes when filling prescriptions even for non-controlled substances.

We find the Board is justified in its request that Jackson's license to practice pharmacy be immediately suspended for a period of one year. Effective December 31, 2014, the Board is authorized to suspend her license for one year, pursuant to § 338.055.4.

SO ORDERED on January 6, 2015.

/s/ Karen A. Winn

KAREN A. WINN
Commissioner